

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3660 of 2012
and MP.No.1 of 2012
and CMP.No.3519 of 2016

M/s.Bajaj Allianz General Ins. Co. Ltd.,
KMA complex, I floor,
12-G, Ram Nagar,
By pass road, Madurai - 625 010. ... Appellant/
2nd Respondent

Vs.

1.Mahendran (died)

2.Pappathi

3.Minor Vinothini ... Respondents 1 to 3/
(reb.by mother pappathi mahendran Petitioners 1 to 3
amended as per order I.A.No.641/10
order dated 08/06/2011)

4.K.Subburayan S/o.Kaliyanna Gounder,
(set exparte before the Tribunal) ... IV Respondent/
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.142 of 2007 dated 29.02.2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Ariyalur.

For Appellant : Mr.R.Rathna Thara
For Respondents : Mr.V.Achuthanandam
2 & 3 for M/s.Pass Associates.

J U D G M E N T

This appeal has been filed against the judgment and decree made in MCOP.No.142 of 2007 dated 29.02.2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Ariyalur.

2. The case of the first respondent/claimant before the Tribunal is as follows :-

The case of the claimant/first petitioner is that on 03.05.2006, he was riding Bajaj CT 100 bike bearing registration TN 46 C 9576 proceeding from south to north in a slow and steady manner, a tractor with trailer bearing Registration No.TN07 D 9430 came in the opposite direction with great speed and the driver drove the tractor in a rash and negligent manner and dashed against the first petitioner bike. Due to the sudden impact the first petitioner was thrown away from the bike and sustained injuries on his right hand, left leg and on head. He was admitted in the Vinodhagan Hospital, Thanjavur. The right hand of the first petitioner was amputated and was admitted as inpatient for one month and he was under medication and visiting the hospital for periodical check up. The first petitioner was running a tea and snack stall at Ellakurichi village and used to prepare tea on an alternative days due to amputation, the first petitioner could not attend the work and to depend on others and permanently engaged a worker for preparing tea, thereby incurred a loss of Rs.120/- per day and he was earning a sum of Rs.100/- per day and Rs.3,000/-p.m. Ever since, the accident, he was suffering from constant ailments, during the course of continuous treatment, the first petitioner died on 12.10.2007 leaving behind the petitioners 2 and 3 as his legal heirs.

3. The second respondent/insurance company filed counter stating that the deceased was not died due to the injuries sustained in the accident. The accident is admitted but the manner in which the accident took place has not been rightly set out in the claim petition. The claimant without noticing the oncoming vehicle and thus brought the accident on his own negligence. The claimant did not noticed any of the signals given by the driver of the lorry and blindly crossed the busy road. The petition is bad for non-joinder of necessary parties. The colluded vehicle TN46-C-9576 was not impleaded as party in this claim petition. The amount claimed by the petitioner is highly excessive.

4. In order to prove the case of the claimant, the claimant examined PW1 and PW2 and marked Ex.P1 to Ex.P13. On the side of the respondent, RW1 was examined and No documentary evidence has been marked on the side of the respondents.

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the appellant/insurance company mainly contended that the accident took place on 03.05.2006 and the claimant died on 12.10.2007. PW2 and the driver of the

tractor were present at the place of occurrence. PW2 had clearly deposed that how the accident was taken place and how the driver of the first respondent is responsible for the accident. PW2's evidence is intact and his evidence has not been shackled and shuttered on the side of the 2nd respondent.

7. The learned counsel for the respondents 2 and 3 stated that the non examination of the driver of the tractor, the tribunal has rightly comes to the conclusion that the accident was taken place only due to rash and negligent driving of the lorry driver. The fact remains undisputed that the lorry was insured with the appellant/insurance company, hence, the appellant is liable to pay compensation to the respondents.

8. From the available records, it is seen that the tribunal has rightly fixed the compensation by adopting the multiplier method and granted total compensation of Rs.4,99,360/-. The learned counsel for the petitioner during the course of argument taken a stand that the deceased first respondent was not died due to the accident that had taken place on 03.05.2006, she had further stated that the first respondent died due to liver cirrhosis and the deceased first respondent is an addict of alcohol. The counsel appearing for the appellant/insurance company is not in a position to produce any evidence to prove that the first respondent died out of liver cirrhosis. Ex.P11, Ex.P12 and Ex.P13 are the scan reports and the discharge summary of the deceased first respondent, wherein it is stated that the liver appears to be clear, the appellant counsel/insurance company failed to produce any contra evidence to deny the same. Failure on the part of the learned counsel appearing for the appellant to produce any such contra evidence, this Court is not inclined to interfere with the award passed by the Tribunal.

9. In the result, the civil miscellaneous petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Additional District Judge, Fast Track Court, Ariyalur.

2.The Section Officer,
VR Section,
High Court Madras.

+1 cc to M/s.Pass Associats,Advocate Sr.No. 4290
+1 cc to M/s.R.Rathna Thara, Advocate Sr.No. 3982

C.M.A.No.3660 of 2012

PP (CO)
RMP (06/01/2021)



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